REMARKS

In the Office Action, Claims 1, 6, 10, 15, 22, and 31 were rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. In addition, Claims 1-27 and 31-33 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,101,353, to Lupien.

While applicant does not concede the propriety of the claim rejections, applicant has amended the claims as provided herewith to advance the prosecution of the application. Claim 2 has been canceled in view of the amendment of Claim 1. New Claim 34 has been added. Thus Claims 1, 3-27, and 31-34 are pending in the application. Applicant respectfully requests reconsideration and allowance of the application.

Claims 1, 6, 10, 15, 22, and 31 Recite Statutory Subject Matter

Applicant has thoroughly considered the comments provided in the Office Action pertaining to the Section 101 rejection, as well as the discussion in the "Response to Arguments" section on pages 9-10 of the Office Action, and submits that the subject matter in Claims 1, 6, 10, 15, 22, and 31 meets the requirements of Section 101. Applicant submits that Claims 1, 6, 10, 15, 22, and 31 recite more than "mere abstract ideas without a practical application" as alleged in the Office Action, and indeed recite a computer-implemented method and system that produce a useful, concrete, and tangible result for trading items between market participants. As there is no basis for the Examiner to maintain the claim rejections under Section 101, the claim rejections should be withdrawn.

Brief Overview of Examples Provided in the Present Application

The following discussion is repeated herein to help the Examiner appreciate the various embodiments disclosed in the detailed description of the application as filed. This discussion is drawn from applicant's prior responses submitted March 5, 2007, and September 4, 2007, and is based on the specification as filed in the present application. This discussion is not intended to

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define the scope of the claims, but rather to demonstrate that the claim amendments submitted herewith are supported by the disclosed embodiments in the specification.

In accordance with the present disclosure, during an overlapping time interval, an order for an item may be posted in multiple markets. During this overlapping time interval, the order is available to market participants in the multiple markets to complete a trade for the item in the order. The multiple markets are separate and distinct markets. To prevent multiple executions of the same order in the different markets, the execution of the order is controlled to ensure that *one market, at most, executes the order.*

For background understanding, applicant quotes the following passages of the present application:

> Referring now to the drawings, and in particular to FIG. 1, there is illustrated a block diagram showing the components used with the present methodology. System 5 is a general purpose computer or network of computers programmed in accordance with the present invention and functions as a platform for allowing electronic liquidity finder (ELF) programs and umpire programs to interact.
>
> . . .
>
> An ELF may be thought of as a virtual floor broker that operates at electronic speeds. Forming an ELF is the culmination of a procedure involving configuring an order-handling program with specifications from a trader, and executing the configured program on the platform of system 5 to create an order handling engine, also referred to herein as a trading process. An order ELF may be coupled to as many order umpires as desired.
>
> An order umpire may be thought of as a formal or informal market that defines and implements the rules of engagement by which information or merchandise is exchanged between ELFs. An umpire is formed by configuring a market program with configurations from a market provider, and executing the configured program on the platform of system 5 to create a market process. Generally, if activity in multiple markets is desirable, an order ELF elects to couple to multiple umpires associated with such markets, rather than expecting the umpires to link with each other.

(See page 4, lines 22-26, and page 5, lines 17-28.)

Service: Representation of order in multiple markets

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An order can be represented in multiple markets without risk of multiple executions. Multiple executions are prevented via several mechanisms.

In one mechanism, control over an order is associated with a particular process, usually an order ELF but sometimes an order umpire in fast symbol mode, and another process trying to execute the order must first obtain permission from the controlling process before actually executing; this mechanism is referred to as a ***two-phase commit***.

When an umpire declares itself to be in fast symbol mode, another umpire process can execute an order represented at the fast symbol umpire, only after the order is first cancelled from the first symbol umpire.

In another mechanism, an order umpire can declare itself to be ***in-process***, and then another umpire that subsequently becomes in-process skips its own orders that it finds, via the respective order tails of the orders, to be in-process at umpires having an in-process start time preceding the in-process start time of the instant order umpire.

It is also possible for an individual order to be in-process at an umpire, although the umpire itself is not in-process.

When an umpire is in-process, an order represented at the in-process umpire cannot be cancelled.

When an order is in-process at an umpire, the in-process order cannot be cancelled.

Accordingly, an order ELF must manage its order so that the order is in-process at no more than one umpire.

The two-phase commit and in-process mechanisms are integrated in system 5.

Figs. 93A-93C show an example of representing an order in multiple markets, specifically, an umpire asking an order ELF for affirmation before pairing the ELF's order with a contra-side order, and an order ELF canceling its order from a second market after the order is paired in a first market. See also Tables 14-16.

Conventional trading systems assume that an order represented in their marketplace is immediately available for execution, that is, conventional trading systems permanently operate in fast symbol mode. Accordingly, with conventional systems, when a trader wishes to represent an order in multiple markets, the trader runs the risk of multiple executions. Some trading systems are aware of other markets and will route orders in their market to another market when the price is better; however, conventional markets adhere to the concept of control over the order being embedded in the order. In contrast, system 5 separates control over the order from where the order is represented.

(See page 22, line 27, to page 23, line 29, of the application as filed; emphasis added.)

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An example illustrating a "use case" in which an order is represented in multiple markets while duplicate execution is prevented is set forth at page 101, line 13, to page 110, line 10 of the present application, in connection with FIGURES 93A-93C.

Cited Art

Briefly stated, U.S. Patent No. 5,101,353 (hereinafter "Lupien") relates to an automated system for trading securities in a portfolio. After considering portfolio data, such as a "client's current and 'normal' holdings for each security and its identification data, together with estimates of each security's price variability, cash flows, and a number of investment characteristics such as industry and sector exposures, earnings/price and debt/equity ratios," as well as "instructions concerning the maximum and minimum cash positions designated by the client and the deviations allowed from the base portfolio's individual sector, industry and security weightings" (Col. 3, lines 15-28), the system reviews real-time securities trading data and automatically issues buy and/or sell orders (Col. 10, lines 24-30).

Claims 1, 3-9, and 34 Are Patentable Over Lupien

In contrast to Claim 1 of the present application, Lupien does not teach a computer-implemented method of operating at least two markets on a platform comprising a computer system. In particular, Lupien does not teach "operating a first market process and a second market process on the computer system, wherein the first and second market processes respectively provide first and second markets that are separate and distinct and are each configured to execute orders for trading items between market participants," nor does Lupien teach "automatically, during an overlapping time interval, posting an order for an item in both the first market and the second market, wherein during the overlapping time interval, the order is available to market participants in both the first and second markets to complete a trade for the item in the order."

Applicant has also fully considered the disclosure of Lupien and does not find any teaching or suggestion of "automatically controlling the execution of the order to ensure that the

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order is executed in at most one of the first and second markets, wherein each of the first and second markets operates according to a two phase action protocol in which in a first phase, permission is obtained from a controlling process to execute the order, and in a second phase, the order is executed only if permission from the controlling process is obtained," and "automatically, using at least one computer, reporting the execution of the order and the market in which the order was executed."

With respect to Claim 1, the Office Action cited Lupien at Col. 2, lines 60-67; Col. 3, lines 1-14; Col. 5, lines 63-67; Col. 6, lines 1-67; Col. 7-12[1], lines 1-67; Col. 17, lines 63-67; and Col. 18, lines 1-49. As with prior Office Actions, this same citation of Lupien is used to reject all of the pending claims, without any explanation as to how these passages pertain to the subject matter recited in the claims. Applicant has reviewed the entire Lupien reference and finds no disclosure that anticipates the pending claims.

At Col. 2, lines 60-67, and Col. 3, lines 1-14, Lupien states:

> The present invention is an automated securities trading and portfolio management system for use by investment managers. The system is designed to increase liquidity in the secondary markets for securities and to generate incremental returns for security portfolios. Although the system of the invention works well with all diversified portfolios, it is particularly beneficial when used with large portfolios including large numbers of securities, such as those maintained by institutional investors. The invention achieves these effects by using a portion of the portfolio's holdings to offer liquidity to the market. The system contains portfolio balancing controls which seek to ensure that the risk and return characteristics of each underlying portfolio are retained throughout the liquidity generating process. The system monitors security trades, price and size quotations and various portfolio characteristics as well as other factors in real time as disclosed herein. In response to this monitoring process the system enters, alters or cancels buy and sell orders and/or sets thereof through its own network, other networks and/or with computerized brokers and/or computerized stock exchanges.

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[1] The Office Action cited "column 7-22 lines 1-67." However, column 18 is the last column in the patent; there is no column 22. This error has been perpetuated from prior Office Actions. As indicated in applicant's prior responses, applicant believes the Examiner meant "column 7-12 lines 1-67" and responds accordingly. In any event, applicant has considered the entire reference in preparing this response.

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This passage of Lupien says nothing about "operating a first market process and a second market process on the computer system, wherein the first and second market processes respectively provide first and second markets that are separate and distinct and are each configured to execute orders for trading items between market participants," nor does it teach "automatically, during an overlapping time interval, posting an order for an item in both the first market and the second market, wherein during the overlapping time interval, the order is available to market participants in both the first and second markets to complete a trade for the item in the order," as claimed in Claim 1.

Lupien states that his system "enters, alters or cancels buy and sell orders and/or sets thereof through its own network, other networks and/or with computerized brokers and/or computerized stock exchanges" but there is nothing to suggest that the orders are posted, during an overlapping time interval, in both a first market and a second market that are separate and distinct markets operating on the computer system. This passage is also devoid of any teaching of "controlling the execution of the order to ensure that the order is executed in at most one of the first and second markets, wherein each of the first and second markets operates according to a two phase action protocol in which in a first phase, permission is obtained from a controlling process to execute the order, and in a second phase, the order is executed only if permission from the controlling process is obtained."

The cited passage extending from Col. 5, line 63, to Col. 12, line 67, is too large to repeat here, but applicant has again considered the disclosure and submits that this passage of Lupien fails to teach or suggest the method recited in Claim 1. At best, Lupien teaches a procedure in which an order is first represented internally and if the order is not executed, the system can decide to instead send the order to an external system. See Figure 7, elements 44, 46, and 48 (if there is no internal order match at block 44, control is passed to block 46 where the order is sent to an external market for possible match at block 48).

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Lastly, the Office Action cited the text of Claim 12 of Lupien at Col. 17, line 63, to Col. 18, line 49, which states:

> 12. An on-line interactive event-driven investment processing system for providing added liquidity to continuous auction markets for investment securities and for managing in a real-time environment the interaction of one or more large portfolios of investment securities with each other and with the securities markets, wherein each portfolio has an inventory including numerous and diverse securities and each portfolio has separate portfolio objectives represented by a specified desired mix of investments in securities and cash reserves through generation of trading decisions in the form of buy and sell orders on behalf of each of those portfolios comprising:
>
> first mass storage means within a central processing unit for collecting and storing securities transaction data and price quotation data both from a plurality of securities markets external to the system and from buy and sell orders and transactions generated internal to the system;
>
> controller means for accessing data stored in said first storage means, for analyzing the data stored in said first storage means and for substantially simultaneously transacting multiple purchases and sales of a plurality of securities for one or more of the investor portfolios;
>
> second mass storage means coupled to said controller means for collecting and storing data for each investor portfolio concerning that particular portfolio and for storing buy and sell orders on behalf of that particular portfolio;
>
> investor computer means for maintaining each investor portfolio wherein said investor computer means is coupled to said second storage means for analyzing data concerning the portfolio of that particular investor and for generating buy and sell orders for transmission to said second storage means on behalf of that portfolio in order to retain the portfolio objectives while also providing liquidity to the securities market;
>
> third mass storage means coupled to said controller means for collecting and storing data concerning the portfolios of all investors using the system;
>
> supervisory computer means coupled to said third storage means for supervising and ensuring the proper functioning of the system;
>
> external data terminal means coupled to said controller means for linking said controller means to external automated securities brokers and exchanges and for transmitting orders and transaction data to external automated securities brokers and exchanges;
>
> trade data terminal means coupled to said controller means for reporting all executed sales internal to the system to a central reporting house; and

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> settlement data terminal means coupled to said controller means for reporting all trades involving individual securities for settlement purposes to an external organization.

From this disclosure, it appears that Lupien's "external data terminal means" can choose among external automated securities brokers and exchanges for transmitting orders and transaction data. Nevertheless, this disclosure says nothing about operating at least two markets on a platform comprising a computer system, nor does it say anything about posting an order for an item in both the first and second markets during an overlapping time interval or controlling the execution of the order, wherein the first and second markets operate according to a two phase action protocol, as claimed in Claim 1.

For at least the above reasons, applicant submits that Claim 1 is patentable over Lupien and should be allowed.

As noted above, the Office Action cited the same passages of Lupien *en masse* against all the claims in the application, including Claims 3-9 which are dependent on Claim 1. No further explanation was provided in the Office Action. Applicant submits that Claims 3-9, as well as new Claim 34, are allowable over Lupien, both for their dependence on allowable Claim 1 and for the additional subject matter they recite. Allowance of Claims 3-9 and 34 is also requested.

Claims 10-14 Are Patentable Over Lupien

Claim 10 of the present application recites a computer-implemented method of representing an order for an item in at least two markets. The method comprises, in part, "automatically, during an overlapping time interval, posting the order in at least two markets that are separate and distinct markets, wherein during the overlapping time interval, the order is available to market participants in the at least two markets to complete a trade for the item in the order" and "automatically controlling the execution of the order by providing executing authority to a single controlling process from which permission is obtained for the order to be executed, and in which the order is executed only after permission to execute the order is obtained from the controlling process."

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For reasons similar to those discussed above with respect to Claim 1, applicant submits that Claim 10 is patentable over Lupien. In Lupien, CPU 10 appears to be responsible for trades on Lupien's internal system, where external trading processes complete their trading transactions outside of Lupien's system. This does not constitute "automatically controlling the execution of the order by providing executing authority to a single controlling process from which permission is obtained for the order to be executed, and in which the order is executed only after permission to execute the order is obtained from the controlling process."

As noted above, the Office Action cited Lupien at Col. 2, lines 60-67; Col. 3, lines 1-14; Col. 5, lines 63-67; Col. 6, lines 1-67; Col. 7-12[2], lines 1-67; Col. 17, lines 63-67; and Col. 18, lines 1-49, but these passages do not teach or suggest the method claimed in Claim 10. Accordingly, Claim 10 should be allowed.

Applicant further submits that Claims 11-14 are allowable over Lupien, both for their dependence on allowable Claim 10, and for the additional subject matter they recite.

Allowance of Claims 11-14 is requested.

Claims 15-21 Are Patentable Over Lupien

Claim 15 is directed to a computer-implemented method for processing an order that, during an overlapping time interval, has been posted in at least two separate and distinct markets. In Claim 15, the method comprises "automatically receiving an inquiry from one of the at least two markets to affirm the availability of the order for execution in the one market, wherein the one market is precluded from executing the order until the availability of the order for execution is affirmed," "automatically affirming availability of a specified number of items in the order to the one market," and "automatically receiving a pairing report from the one market for at least one of the affirmed items."

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[2] See footnote 1.

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Applicant submits that Lupien fails to teach or suggest all of the elements of Claim 15. According to Lupien, confirmation of a match received by CPU 10 from an external trading process constitutes neither "affirming availability of a specified number of items in the order to the one market" nor "receiving a pairing report from the one market for at least one of the affirmed items." Lupien does not support a *prima facie* rejection of Claim 15 under 35 U.S.C. § 102(b). Applicant further submits that Claims 16-21 are allowable over Lupien, both for their dependence on allowable Claim 15, and for the additional subject matter they recite.

Allowance of Claims 15-21 is requested.

Claims 22-27 Are Patentable Over Lupien

Claim 22 recites a computer-implemented method of executing an order for an item in a market. The market is one of at least two separate and distinct markets at which the order has been posted, during an overlapping time interval, for completing a trade for the item. The method comprises "automatically, at a receiving market that operates on a computer system, receiving the order from a source, wherein the order has also been received by another market that operates on the same computer system, the order being available to market participants in the at least two markets during the overlapping time interval to complete a trade for the item in the order," "automatically determining whether the receiving market is authorized to execute the order," "automatically executing the order at the receiving market after the receiving market has determined that it is authorized to execute the order, and further canceling the order in the other of the at least two markets," and "automatically reporting the execution of the order."

Lupien does not disclose all of the elements of Claim 22. Lupien at best teaches a procedure in which an order is initially represented internally and if the order is not executed, the system may then place the order with an external system. See Figure 7, elements 44, 46, and 48.

The passages of Lupien cited in the Office Action at Col. 2, line 60, to Col. 3, line 14; Col. 5, lines 63-67; Col. 6, line 1, to Col. 12, line 67; and Col. 17, line 63, to Col. 18, line 49 are not availing with respect to Claim 22. For reasons similar to those discussed above with respect

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to Claims 1, 10, and 15, applicant submits that Claim 22 is patentable over Lupien. Applicant further submits that Claims 23-27 are allowable over Lupien, both for their dependence on allowable Claim 22, and for the additional subject matter they recite.

Allowance of Claims 22-27 is requested.

Claims 31-33 Are Patentable Over Lupien

Claim 31 is directed to a system comprising at least one computer having a processing component configured to operate a first market and a second market that are separate and distinct markets at which market participants can trade. The processing component is further configured to receive an order from a market participant and, during an overlapping time interval, post the order in both the first market and the second market. The order is available to market participants in both the first and second markets during the overlapping time interval to complete a trade. Furthermore, the processing component is configured to control the execution of the order to ensure that the order is executed in at most one of the first and second markets.

Applicant has reviewed Lupien and submits that Claim 31 presents subject matter that is patentable over Lupien. The Office Action has not provided further explanation how Lupien applies to the claimed system other than to cite the same passages noted above. Applicant respectfully traverses the rejection of Claim 31 for the reasons discussed above.

Applicant further submits that Claims 32 and 33 are allowable over Lupien, both for their dependence on allowable Claim 31, and for the additional subject matter they recite.

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CONCLUSION

In view of the above amendments and remarks, applicant requests withdrawal of the claim rejections under Section 101 and 102(b), and issuance of a notice of allowance. The Examiner is invited to contact the undersigned counsel by telephone should any matters remain.

Respectfully submitted,

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